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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,880	12/08/2003	Michael J. Shea	EX-4-COMM	9623
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MICHAEL J. SHEA 1711 WIND HAVEN WAY VIENNA, VA 22182			EXAMINER SYED, FARHAN M	
			ART UNIT 2165	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/728,880	Applicant(s) SHEA, MICHAEL J.	
	Examiner FARHAN M. SYED	Art Unit 2165	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 56-74 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 56-74 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/23/11</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 56-74, filed 29 December 2010, are pending. The Examiner acknowledges cancelled claims 1-55, amended claim 56, and newly added claims 59-74.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 29 December 2010 has been entered.

Information Disclosure Statement

3. The information disclosure statement (IDS) submitted on 23 January 2011 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Response to Remarks/Argument

4. Applicant's arguments with respect to claims 1-12, 14-21, 23-27, 29-30, and 48-58 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 56-74 are rejected under 35 U.S.C. 103(a) as being unpatentable by Albert et al (U.S. 2004/0229729, filed 18 June 2002)(newly presented) in view of Theimer, Marvin, et al (U.S. 5,493,692, filed 03 December 1993).

As per claim 56, Albert teaches a system comprising:

a communication circuit configured to receive first exercise activity data communicated from exercise machines used by exercisers (first exercise is performed on the exercise machine, generating exercise data stored in a database.)(Albert, paragraphs [0014-0018]) and second exercise data communicated from one or more computers receiving inputs supplied by exercisers indicative of exercises performed without using an exercise machine (second exercise data is generated as workout routines and stored in a computer.)(Albert, paragraphs [0014-0019]);

a memory storing exercise activity records for multiple exercises (i.e. memory operable connected to a processor...data related to a physical condition of the individual is stored in memory.)(Albert, paragraph [0012]);

a processing system programmed to update the stored exercise activity records based on the first exercise activity data received from the exercise machines (i.e. exercise

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program assigned to each of the plurality of individuals that involves providing a database a record of each of the plurality of individuals, number or workouts, etc. are modified and updated.)(Albert, paragraphs [0011, 0085]) and the second exercise data received from one or more computers (Albert, paragraphs [0014-0019]), to identify one or more exercises by applying one or more criteria to the exercise activity records of each of the multiple exercises (while performing the exercise, establishing a relationship between a baseline exercise and the exercise selected based on specific criteria such as age, weight, resistance.)(Albert, paragraph [0049-0050, 0055]), to generate messages related to the identified exercisers (i.e. generating messages based on the value of the workout to the user or a member report card welcoming the exerciser to the program.)(Albert, paragraph [0082]).

Albert does not explicitly teach send the generated messages over a communications network.

Theimer teaches send the generated messages over a communications network (Figure 2 illustrate a User Agent A sending an e-mail message to User Agent B)(Figure 2).

Albert is directed to an exercise system having a local computer control that monitors a user's usage. Theimer is directed to users of particular devices and activities in a multiple computer system based upon current location and surrounding environment. Both are analogous art, and therefore, it would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Albert with the teachings of Theimer to include send the generated messages as e-mail messages with the motivation to selectively deliver electronic messages to an identified user via a particular computer device based on context and environment (Theimer, column 1, lines 25-30).

As per claim 57, the modified teachings of Albert with Theimer teaches the system according to claim 56, wherein the messages specify, for each identified exerciser, an exercise activity (i.e. generating messages based on selected exercise program.)(Albert, paragraph [0085]).

As per claim 58, the modified teachings of Albert with Theimer teaches the system according to claim 57, wherein the specified exercise activity is based on the exercise activity records for the exerciser (i.e. exercise programs are based on data stored in the database associated with the exerciser.)(Albert, paragraphs [0014-0018]).

As per claim 59, Albert teaches a system comprising:

a communication circuit configured to receive first exercise activity data communicated from exercise machines used by exercisers (first exercise is performed on the exercise machine, generating exercise data stored in a database.)(Albert, paragraphs [0014-0018]) and second exercise data communicated from one or more computers receiving inputs supplied by exercisers indicative of exercises performed without using an exercise machine (second exercise data is generated as workout routines and stored in a computer.)(Albert, paragraphs [0014-0019]);

a memory storing exercise activity records for multiple exercises (i.e. memory operable connected to a processor...data related to a physical condition of the individual is stored in memory.)(Albert, paragraph [0012]);

a processing system programmed to update the stored exercise activity records based on the first exercise activity data received from the exercise machines (i.e. exercise program assigned to each of the plurality of individuals that involves providing a database a record of each of the plurality of individuals, number or workouts, etc. are modified and updated.)(Albert, paragraphs [0011, 0085]) and the second exercise data received from one or more computers (Albert, paragraphs [0014-0019]), to identify one or more exercises by applying one or more criteria to the exercise activity records of each of the multiple exercises (while performing the exercise, establishing a relationship between a baseline exercise and the exercise selected based on specific criteria such as age, weight, resistance.)(Albert, paragraph [0049-0050, 0055]), to generate messages related to the identified exercisers (i.e. generating messages based on the value of the workout to the user or a member report card welcoming the exerciser to the program.)(Albert, paragraph [0082]).

Albert does not explicitly teach send the generated messages over a communications network.

Theimer teaches send the generated messages over a communications network (Figure 2 illustrate a User Agent A sending an e-mail message to User Agent B)(Figure 2).

Albert is directed to an exercise system having a local computer control that monitors a user's usage. Theimer is directed to users of particular devices and activities in a multiple computer system based upon current location and surrounding environment. Both are analogous art, and therefore, it would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Albert with the teachings of Theimer to include send the generated messages as e-mail messages with the motivation to selectively deliver electronic

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messages to an identified user via a particular computer device based on context and environment (Theimer, column 1, lines 25-30).

As per claim 60, the modified teachings of Albert with Theimer teaches the system according to claim 59 wherein the exercise apparatus is configured for wireless communication (Albert, paragraphs [0018, 0025, 0082]).

As per claim 61, the modified teachings of Albert with Theimer teaches the system according to claim 59, wherein the communication network comprises a wireless network (Albert, paragraphs [0018, 0025, 0082]).

As per claim 62, the modified teachings of Albert with Theimer teaches the system according to claim 59, wherein the exercise apparatus comprises a treadmill (The Examiner notes that exercise machines include treadmill, elliptical, bicycling, etc.)(Albert, paragraphs [0018, 0025, 0082]).

As per claim 63, the modified teachings of Albert with Theimer teaches the system according to claim 59, wherein the exercise apparatus comprises a stationary bicycle (The Examiner notes that exercise machines include treadmill, elliptical, bicycling, etc.)(Albert, paragraphs [0018, 0025, 0082]).

As per claim 64, the modified teachings of Albert with Theimer teaches the system according to claim 59, wherein the exercise apparatus comprises a cross-trainer (The

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Examiner notes that exercise machines include treadmill, elliptical (e.g. cross-trainer), bicycling, etc.)(Albert, paragraphs [0018, 0025, 0082]).

As per claim 65, the modified teachings of Albert with Theimer teaches the system according to claim 59, wherein the workout data comprises a program for controlling a parameter of a movable element of the exercise apparatus (Exercise data generated is based on exercise activities and therefore suggests controlling a parameter of a moveable element of the exercise machine.)(Albert, paragraphs [0018, 0025, 0082]).

As per claim 66, the modified teachings of Albert with Theimer teaches the system according to claim 59, wherein the workout data comprises an exercise activity other than use of the exercise apparatus (exercise data includes all exercise activities suggesting data from exercise activity other than the exercise apparatus.)(Albert, paragraphs [0014-0018, 0082]).

As per claim 67, the modified teachings of Albert with Theimer teaches the system according to claim 59, wherein the second exercise activity data received from the computer is indicative of one or more of walking, swimming, biking, tennis, golf and jogging activities (The Examiner notes that exercise machines include treadmill, elliptical, bicycling, etc. Exercise data generated from exercise machines such as treadmill suggest to activities such as walking, jogging, or running activities.)(Albert, paragraphs [0055, 0082, 0085])..

As per claim 68, Albert teaches a system for use by an exerciser that works out by performing first exercise activities using an exercise apparatus configured for wireless

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communication and by performing second exercise activities without using any exercise apparatus, the system comprising:

a communication circuit configured to receive first exercise activity data communicated from exercise machines used by exercisers (first exercise is performed on the exercise machine, generating exercise data stored in a database.)(Albert, paragraphs [0014-0018]) and second exercise data communicated from one or more computers receiving inputs supplied by exercisers indicative of exercises performed without using an exercise machine (second exercise data is generated as workout routines and stored in a computer.)(Albert, paragraphs [0014-0019]);

a memory storing exercise activity records for multiple exercises (i.e. memory operable connected to a processor...data related to a physical condition of the individual is stored in memory.)(Albert, paragraph [0012]);

a processing system programmed to update the stored exercise activity records based on the first exercise activity data received from the exercise machines (i.e. exercise program assigned to each of the plurality of individuals that involves providing a database a record of each of the plurality of individuals, number or workouts, etc. are modified and updated.)(Albert, paragraphs [0011, 0085]) and the second exercise data received from one or more computers (Albert, paragraphs [0014-0019]), to identify one or more exercises by applying one or more criteria to the exercise activity records of each of the multiple exercises (while performing the exercise, establishing a relationship between a baseline exercise and the exercise selected based on specific criteria such as age, weight, resistance.)(Albert, paragraph [0049-0050, 0055]), to generate messages related to the identified exercisers (i.e. generating messages

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based on the value of the workout to the user or a member report card welcoming the exerciser to the program.)(Albert, paragraph [0082]).

Albert does not explicitly teach send the generated messages over a communications network.

Theimer teaches send the generated messages over a communications network (Figure 2 illustrate a User Agent A sending an e-mail message to User Agent B)(Figure 2).

Albert is directed to an exercise system having a local computer control that monitors a user's usage. Theimer is directed to users of particular devices and activities in a multiple computer system based upon current location and surrounding environment. Both are analogous art, and therefore, it would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Albert with the teachings of Theimer to include send the generated messages as e-mail messages with the motivation to selectively deliver electronic messages to an identified user via a particular computer device based on context and environment (Theimer, column 1, lines 25-30).

As per claim 69, the modified teachings of Albert with Theimer teaches the system according to claim 68, wherein the exercise apparatus comprises a treadmill (The Examiner notes that exercise machines include treadmill, elliptical, bicycling, etc.)(Albert, paragraphs [0018, 0025, 0082]) (Albert, paragraphs [0018, 0025, 0082]).

As per claim 70, the modified teachings of Albert with Theimer teaches the system according to claim 68, wherein the exercise apparatus comprises a stationary bicycle

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(The Examiner notes that exercise machines include treadmill, elliptical, bicycling, etc.)(Albert, paragraphs [0018, 0025, 0082]) (Albert, paragraphs [0018, 0025, 0082]).

As per claim 71, the modified teachings of Albert with Theimer teaches the system according to claim 68, wherein the exercise apparatus comprises a cross-trainer (The Examiner notes that exercise machines include treadmill, elliptical (e.g. cross-trainer), bicycling, etc.)(Albert, paragraphs [0018, 0025, 0082]) (Albert, paragraphs [0018, 0025, 0082]).

As per claim 72, the modified teachings of Albert with Theimer teaches the system according to claim 68, wherein the workout data comprises a program for controlling a parameter of a movable element of the exercise apparatus (Exercise data generated is based on exercise activities and therefore suggests controlling a parameter of a moveable element of the exercise machine.) (Albert, paragraphs [0055, 0082]).

As per claim 73, the modified teachings of Albert with Theimer teaches the system according to claim 68, wherein the workout data comprises an exercise activity other than use of the exercise apparatus (exercise data includes all exercise activities suggesting data from exercise activity other than the exercise apparatus.)(Albert, paragraphs [0014-0018, 0082]).

As per claim 74, the modified teachings of Albert with Theimer teaches the system according to claim 68, wherein the second exercise activity data received from the computer corresponds to one or more of walking, swimming, biking, tennis, golf and jogging activities (The Examiner notes that exercise machines include treadmill, elliptical, bicycling,

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etc. Exercise data generated from exercise machines such as treadmill suggest to activities such as walking, jogging, or running activities.)(Albert, paragraphs [0055, 0082, 0085]).

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Farhan M. Syed whose telephone number is 571-272-7191. The examiner can normally be reached on 8:30AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Neveen Abel-Jalil can be reached on 571-272-4074. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/F. M. S./
Examiner, Art Unit 2165
09 February 2011

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/Neveen Abel-Jalil/

Supervisory Patent Examiner, Art Unit 2165